The Infamia of the Roman Republic

by Isabelle Hazen

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"The infamia of the Roman Republic".

The Infamia of the Roman Republic

If we attempt to write an account of the origin and history of that peculiar institution which the Romans called 'infamia', we find that the task is not as easy a one as it might at first seem. A great deal of the difficulty lies in the indefinite ness arising from the fact that 'infamia' did not have its origin in a law definitely stating the conditions under which it should exist nor did its different phases develop by reason of certain fixed principles or laws. But when we consider the prominent place that custom occupied in the minds of the Romans and when we consider in connection with that the nature of "infamia", we can readily see why it was natural that the conception of it should be a gradual development from custom rather than law.

Before attempting to give an adequate definition of "infamia" we must take into consideration the fact that, to a certain extent, it was dependent upon the customs and ideas of social life. Indeed it is to this very question of

Institutes' 'infamia' or rather to its positive
n Law, p. 190 side - 'existimatio' that we turn
for proof of the statement that social
relations and social views do in-
fluence the law. To a certain ex-
tent law yields to the judgment
of society and in some cases im-
poses legal disabilities on persons
whom society has declared to fall
short of its standards. It is this
'existimatio' or in modern lan-
guage 'civil honour' which gives
rise to the 'infamia' which holds
such a peculiar and yet prominent
position in Roman law. Indeed so
prominent was the place it held
that civil honour at Rome came
dge p. 3, to be known entirely under its
negative aspect.

If we take the word honour alone
we find that it refers to social re-
lations. Sohm (p. 190) says that
"to be honoured is to be allowed
one's full worth in society" and we
know that if a person is to re-
ceive honour his actions must be
in accordance with the standards
which society sets up for itself. It
is by the award or denial of hon-
our that society sanctions the

commands of law and morality as well as the decrees of mere usage. In other words honour means qualification in the eye of society. Just so civil honour must mean qualification in the eye of the law. From this, loss of honour would come to mean at least partial disqualification in the eye of the law.

In all treatises on Roman law we find the expressions, taken bodily from the Latin, "consumtio existimationis" and "minutio existimationis" both referring to civil honour. the former, 'consumtio existimationis' refers to the destroying of the civil honour of a Roman citizen while the latter "minutio existimationis" is that which we refer to as loss of civil honour. We have already found civil honour to mean qualification in the eye of the law. Then this loss of civil honour — this 'minutio existimationis' would naturally mean disqualification from some cause or other, in the eye of the law. It is with this loss of civil honour that the whole question of "infamia" deals.

p. 191.

idge p.13 To the Romans "infamia" meant civic disability based on moral imperfection. The disqualification was based on an injury to reputation, 42 "laesa existimatio" as the Romans called it. Since "existimatio" itself was not a definite uniform conception but differed according to the needs of the community, the 'infamia' resulting from 'laesa existimatio' could not have been a definite uniform procedure. The idea of personal responsibility was involved in 'infamia' since it always followed as the result of a personal act.

While there may have been some vague notion of 'infamia' before the establishment of the censorship, the conception generally given to it, that is, the idea of legal disability involved in it, could not have had its origin earlier than that time. It is closely related to the office of censor and later to that of praetor. No b. Classi- stigma was attached to the person tionary whose name was passed over or dropped from the list of the Senate by the king or consul but from

the time the revision of the list was transferred to the censors it inflicted disgrace. Festus (p. 246) says that rejected senators were not formerly held in disgrace because, as the kings chose those whom they should have in the public council, so consuls and military tribunes with consular power chose certain of the patricians and finally of the plebeians most closely connected with themselves until the time of the Ovinian plebiscitum by which it was decreed that the censors should choose for the senate "ex omni ordine optimum quemque" - from which it came about that those who were rejected and moved from the senate were considered 'ignominiosi'.

Livy has given an account of the beginning of the censorship. In IV 8 he says that in the consulship of Marcus Geganius Macerinus and Titus Quinctius Capitolinus, 443 B.C. the censorship was established - a thing which arose from an humble origin, but afterwards increased so much in importance that in it was vested the regulation of

the morals and discipline of Rome, the Senate and centuries of knights, the distinction of honour and of ignominy were under the sway of that office and the legal right to public and private places.

The original duty of the censors was, as their name indicates, the taking of the census - the numbering and registering the people, assigning them to their tribes etc. At this census each citizen was required to give his own name, that of his father, his age, the name of his wife as well as the number, names and ages of his children if he had any. He then had to give an account of all his property, so far as it was subject to the census.

Out of this grew the so-called "regimen morum" - rule of manners - applied to the power the censor exercised over the morals of the people. Cicero, de Leg. III, 3, says "censores mores populi regunto; probrum in senatu ne relinquunto", and Livy IV, 8, says "in senatu equitumque censuris decoris dedecorisque, discrimen sub dicione ejus magistratus esset".

with p. 401 This duty — this "regimen morum" — invested the censor with a peculiar kind of jurisdiction which in many respects resembles the exercise of public opinion in modern times, for as at the present time there are many actions which are acknowledged by every one to be prejudicial and immoral and yet which do not come under the jurisdiction of positive laws, so in the time of censors there were many cases in which he used his 'nota' that would not come under the definite laws of the times.

The censor then, arranged the people in tribes, centuries and classes. Besides this it came to be a part of his duty to make out the list of senators, striking out the names of such as he considered unworthy and making additions from those who had the proper qualifications.

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Greenidge places the date of the cen-
Greenidge p. 76 sor's assuming this duty somewhere
in the fourth century B. C. - probably
between 318 and 312. If we agree with
Mommsen this "lectio senatus" was
transfered to the censors by the
Ovinian plebiscitum, the only
account we have of this plebis-
citum is given us by Festus
p. 246 who says, "qua (referring to the
plebiscitum) sanctum est, ut censores
ex omni ordine optimum quem-
que curiatim in senatum leg-
erent; quo factum est, ut qui
praeteriti essent et loco moti,
haberentur ignominiosi". Now
this plebiscitum was passed about
312 B.C.; hence we infer that before
this date the censors had nothing
to do with the "lectio senatus".

From this duty of the censor it is
easy to see how the idea of "infamia"
or disqualification for office arose.
There was, at first at least, no
definite law providing for the
disqualification but it seems to
have been left entirely to the
censor's judgment. Greenidge
Greenidge p. 24 says that the "fixed principles of
of disqualification so far from

being imposed on the magistrate from without, were created by him, at least in the main".

If, then, the censors made out the list of the senate, choosing some and rejecting others, the question naturally arises, - What were the grounds upon which this disqualification and rejection was based and were they the same for succeeding censors?

We have seen that the law which gave this right to the censors, at least in so far as it has been preserved for us, was very indefinite. So be sure it says that the censors should choose for the Senate "optimum quemque" but it does not state what qualities a person must have to be considered "optimus"; nor does it, on the other hand, give those things which would make anyone unworthy of being considered "optimus". Since the moral and social standards of Rome were constantly changing, is it not natural that the qualifications necessary for the application of the term "optimus"

should vary at the same time? Therefore each censor might see fit to deviate a little from the path of his predecessor. However in the Lex Julia Municipalis we find certain grounds for disqualification mentioned. It is in this law, passed in the fourth consulship of Julius Caesar that we find, for the first time, a definite statement of those who shall be considered disqualified and it is upon this law that most of the works on "Infamia" are based.

But before taking up these special grounds for disqualification there are one or two points which should be discussed before "infamia" and its workings can be perfectly understood. In the first place we must decide whether the censorian process was a 'judicium' or not. On this point as on many others connected with 'infamia' a great difficulty arises from the fact that the authorities give few examples and are apt in many cases to give the exceptions rather than those cases which follow

the general rule.

Cicero argues against its being a 'judicium', preferring to call it a 'notio' cognizance. That Cicero was prejudiced against the whole idea of 'infamia' so exercised by the censors, we must admit and must, therefore, make allowances, yet we can not strike out his evidence entirely and, indeed, it is to him that we continually turn for evidence. In his Oratio de Provinciis Consularibus XIX. he uses 'notio'. "Quae aut vobis statuendum est.... censorium judicium ac notionem et illud morum severissimum magisterium non esse nefariis legibus de civitate sublatum." Again he uses 'notio' in Pro P. Sestio XXV. "immo vero approbantibus etiam ut censoria notio et gravissimum judicium sanctissimi magistratus de republica tolleretur." Livy several times uses notio. For instance in XXVII, 25. he says that there was a debate in the senate about the case of Marcus Livius, praefect of Tarentum, different opinions were expressed as to what course should be adopted;

those taking the middle course declaring "ad censores non ad senatum notionem de eo pertinere." But Livy is not consistent in his name of this process for in XXIII, 23. we find him using "judicium". The dictator is speaking. He says he would place a limit on those things which immoderate fortune, time and necessity had done - "nam neque senatu quemquam motum ex iis, quos C. Flaminius, L. Aemilius censores in senatum legissent; transcribi tantum recitarique eos jussurum, ne penes unum hominem judicium arbitriumque de fama ac moribus senatoriis esset."

Cicero takes the word "judicium" in its strict meaning of trial. In Pro Cluentio XLV he says "Quid igitur censorii secuti sunt? Ne ipsi quidem, ut gravissime dicunt, quidquam aliud dicent praeter sermonem atque famam. Nihil se testibus, nihil gravi aliquo argumento comperisse, nihil denique causa cognita, statuisse dicent."

It has already been shown that at first, at least, the censor's

'infamia' rested entirely in his hands and was exercised at his own discretion. If so, then at first we would not be justified in saying that the process was a judicium which implies the presence of certain of the essentials to a trial. We will endeavor to prove that Cicero is not right in making a definite statement that none of the regular accompaniments of a trial were present. To be sure these were not necessary but there is direct evidence from the Latin writers themselves that they were sometimes used. If the fact with which the censors were concerned was already proved there would be no need of them but if it was only believed by the censors and not yet proved, there might be something like a "judicium" before the censor would pass his judgment or rather would mark with 'infamia'. And here we look to Cicero again for evidence or rather for an example which may serve to prove this statement. To be sure the power still rested in the hands of the censor

but we are led to suppose that the censors who were conscientious in the performance of their duties would not cause a person to suffer from 'infamia' unless a third party should bring an accusation and the evidence should be sufficient to warrant the censor's exercising his power of 'infamia'. The example referred to occured in the censorship of Scipio Africanus in 199 B. C. He fully believed a certain knight guilty of perjury but when no one would accuse him or give evidence against him, he said "Tradite equum (inquit) Sacerdos, ac lucifac censoriam notam ne ego in tua persona et accusatoris et testis, et judicis partes egisse videar." (pro Cluent. XLVI).

That such a thing as a prosecutor was possible with the censors is shown by a remark in Livy XXIX, 42. "longe gravissima in L. Quinctium vratio est, qua si accusator ante notam, non censor post notam usus esset, retinere L. Quinctium in senatum ne frater quidem L. Quinctius, si tum censor esset, potuisset."

Valerius Maximus furnishes evidence that witnesses could be summoned- "... M. Valerius Maximus et C. Junius Bubulcus Brutus censores L. Antonium senatu moverunt, quod, quam virginem in matrimonium duxerat, repudiasset, multo amicorum in consilium adhibito." (II 9).

Another way in which the censor's process resembles a 'judicium' is in the summons to plead the cause before the censor. An example can be cited from Livy (XXIX-38) where there is a summons and that is in the first part of the third century B.C.- "censores--d---- ad mores hominum regendos animum adverterunt castigandique vitia, quae ---- eo mala bello erant". M. Caecilius Metellus was the first one summoned - "iisque deinde et ceteris ejusdem noxae reis causam dicere, cum purgari nequissent pronuntiarunt."

But by the close of the Republic we find that impeachment by a third party is made necessary by a plebiscite of the year 58 B.C. which says "ne quis censores in senatu legendo praeterirent, neve qua ignominia afficerent nisi qui aperte

eos accusatus et utrinsque censoris sententia damnatus esset." This law, however, was repealed not many years later.

But there is one important point in which the ordinary 'judicium' differs from that of the censor, — that is in the results of the trial. In the Roman court as in the courts of the present time there was a definite legal punishment as a result of condemnation. In the censor's court the punishment was not like that of other courts. Indeed it may be questioned whether it was, strictly speaking, a punishment at all. It merely marked the condemned with 'infamia', disqualifying him for certain offices or removing him from his rank.

All this seems to point to the fact that while the censor's process connected with 'infamia' was in some cases merely a 'notio', in others it approached a 'judicium' though not like one in every respect. Hence it is not strange that we find both terms applied.

It has already been stated that the censorial use of 'infamia' depended largely upon his own

judgment. But the question arises Was there no check placed on the censor or was his power in this absolute?. Since the tribune was the only one whose power might be used in checking to a certain extent the censor's arbitrary use of his notio we would naturally expect to find some such check - but if we may believe Livy even this was ineffectual. In ~~XLV~~ 16 we find Publius Rutilius suffering from infamia as the result of his actions while tribune - "Multis equi adempti, inter quos P. Rutilio qui tribunus plebis eos violenter accusarat; tribu quoque is motus et aerarius factus." That there was no definite check on the censor during the Republic is evident from the fact that in 58 B. C. the tribune Clodius deemed it necessary to have the plebiscite passed which has already been mentioned and which provided that no one should be passed over in choosing the senate or should suffer from any of the results of 'infamia' unless an accusation had been brought against him and he had been

condemned by both censors.
One might perhaps look for a check on the censor's power in the fact that the time for holding office was limited to eighteen months and that re-election was not allowed. Livy shows the feeling on this subject in XXIII 23. 1 "dictator ubi cum plebeiis in rostra escendit... se probare dixit.... nec censoriam vim sui permissam, et eidem iterum". However this may be, the check lies only in the fact that the same censors could not exercise their power for an indefinite period. During the time they did hold office this would provide no check.
But there was one check which was effective, probably the most effective of all. This arose from the collegiate nature of the office. This collegiality was characteristic of many of the Roman magistracies. The fact that one censor could not act without the consent of his colleague would naturally have more or less weight as the censors were or were not in harmony with each other. But in spite of this we are led to believe that it would prove an

effective check if one should be found necessary. One of the censors might want to have a certain person removed from the Senate or suffer some other kind of 'infamia'. But unless his colleague agreed, no such thing would happen. The colleague might deem him worthy of the highest rank and take this means of keeping him in it. While occasionally the censors may have used their power of veto merely to suit their fancy, we must not believe that it was never used where sound judgment made it necessary. I contend, that the censors did not always disagree we know from Livy XLII 10 - In the censorship of Quintus Fulvius and Lucius Postumius Albinus (173 B.C.) "censores et e republica censura fuit. Illines quos senatu movendum, quibusque equos ademerunt, aerarios fecerunt, et tribu moverunt; neque ab altero notatum alter probavit." And five years later, in the censorship of Caius Flaminius and Lucius Aemilius, there is apparently perfect harmony - "plures quam ab superioribus lectu senatu remoti sunt

et equos vendere jussi. Omnes idem ab utroque et tribu moti et ararii facti, neque ullius, quem alter notaret, ab altero lenata ignominia". (Livy XLII 1, 5).

But now that we have discussed to some extent the nature of 'infamia' and various phases of the censor's exercise of it, let us turn to the grounds for disqualification, the actions which called forth the censor's displeasure to such an extent that he deemed it necessary to use the 'infamia'.

Any attempt that might be made to look for a definite statement of the causes of disqualification in the various stages of the Republic would be disappointing. As has already been said, the grounds for disqualification grew more from custom than law and the censors had free use of their will and judgment in determining who should suffer from 'infamia' and on what grounds. And yet when we say that 'infamia' grew out of custom we must also consider that custom did not then, as it does not now, remain

the same. It varied from time to time as did also the moral and social standards.

If, as has been already stated, the censors depended on their own judgment in the exercise of their 'infamia' we would expect the rules bearing on the disqualifications, if there were any, to come from the censors and not to be imposed on them by leges or any other outside authority. And this is found to be the case, at least during the greater part of the Republic. It was the custom of Roman magistrates to issue edicts when they entered upon their terms of office. If the grounds of the censorian 'infamia' began to assume a permanent character and if they were controlled by no definite laws, it would be natural to turn to the censor's edict as the only means by which the permanent character might be assumed. Mommsen who has evidently good authority for his statement says that the censors upon entering their office published an edict or as he calls it "formula census" or "lex

Staatsrecht II 372

censui censendo dicta" and he gives Livy the credit of originating the application of the word "lex" to the edict - "censores --- in contione edixerunt legem censui censendo dictum esse" (Livy XLIII 14). While each magistrate might issue an entirely new edict when he entered upon his office, it is probable that gradually each one came to use that of his predecessor as a basis at least for his own. Conditions might vary so that changes and additions would be necessary and still an entirely new edict would not be necessary. Since some grounds for disqualification may have seemed more important than others, permanency may have been acquired earlier in some than others. As we shall see later, Cicero proves that in some cases at least censors accepted the decisions of their predecessors.

The first definite statement we have of the grounds for disqualification comes in the Lex Julia Municipalis, already mentioned. It is on this law that much of what has been written on this

phase of Roman law is based.
The disqualifications mentioned in the Lex Julia may be roughly classified in groups and it will perhaps be best to study these groups separately. The disqualifications refer to membership in the councils of the municipal towns etc. "Quae municipia coloniae praefecturae fora conciliabula cuiusque Romanorum sunt erunt, nei quis in eorum quo municipio colonia praefectura conciliabulo in senatu decurionibus conscriptisque esto, neve quoi ibi in eo ordine sententiam dicere ferre liceto: quei iuniti" etc. (Lex Julia Municipalis 108). Caesar's plan seems to have been to establish a government in which the various towns should be similar to Rome. If this is true is it not natural to suppose that the organization of the councils was based to some extent on that of the Senate at Rome and that the grounds for disqualification which he mentions in his Lex Julia were similar to those existing in Rome at that time[2]

The first eight disqualifications might be grouped together. They follow as a result of theft breach of trust, breach of partnership, breach of wardship, breach of agency outrage, malicious intent and of cheating minors. "Dui furti ---- condemnatus pactusve est erit; qui ve iudicio fiduciae, pro socio, tutelae, mandati, iniuriarum. dove dolo malo condemnatus est erit; qui ve lege Plaetoria ob eamve rem, quod adversus eam legem fecit fecerit condemnatus est erit." (Lex Julia 108 et ff.).

When we come to this law we see that there is no longer need of the censors judgment as to who should be disqualified; for there is a definite statement of the grounds for disqualification. There is no reason to believe that there was no connection between these special grounds and the ones the censors used as a basis for their authority. We have already said that the grounds for 'infamia' were not imposed upon the censor from without but were rather created

by him. That was the natural growth of the institution but at the time of this Lex Julia, the growth had reached a place where its results could be made the basis of a certain law. The Roman state has, we know, the out-growth of the family idea. Then, omitting the relation of infamia to family life, we find the first group in the Lex, which has already been mentioned, to be as it were, the result of the next stage in the development of Roman law. This stage is one where the development is far from perfect and, it seems, one where there is great need of some such thing as 'infamia' since legal sanction played little part in the obligations of the time. These obligations were governed largely by that which the Romans called 'bona fides' and it is a violation of this principle which must have formed the basis of the censor's 'infamia'.

Just what this 'bona fides' was, it is not easy to say. Doubtless the Romans understood what it meant so far as there was any

definite meaning - at least they recognized the importance of it. Cicero himself admits that it was a hard thing to define - In his de Officiis III 17 he says, "Sed qui sint boni, et quid sit bene agi, magna quaestio est." He then goes on to say that Scaevola, Pontifex Maximus, thought that the greatest weight was attached to those judgments to which were added the words "ex fide bona" and that the name "bonae fidei" was considered "in tutelis, societatibus fiduciis, mandatis, rebus emptis, venditis, conductis, locatis, quibus vitae societas continetur; in his magni esse judicis, statuere quid quemque cuique praestare oportet." In his letter to Trebatius (ad Fam. VII 12) he shows the idea of honor and regard for another connected with 'bona fides' - "Ubi porro illa erit formula fiduciae, ut inter bonos fagier bene oportet? Dris enim bonus est, qui facit nihil nisi sua causa."[2]

Since then good faith or as the Romans called it "bona fides"

was so important in Cicero's time, is it not a natural conclusion that the idea originated before his time, perhaps increasing in importance as time went on? And since it was so important, it is more than likely that the violation of it in connection with certain obligations would call forth the censor's displeasure and result in 'infamia'.

When therefore we find condemnation for breach of certain obligations mentioned in the Lex Julia as resulting in 'infamia' or disqualification for membership in the councils of the municipia etc. it seems safe to draw the conclusion that the same grounds for disqualification existed at Rome and that they had been assuming a permanent character through the censor's edict and that of the praetor which we shall see was based somewhat on the former. Yet so unsatisfactory and incomplete is the evidence of Latin writers that we must only draw the conclusion from what little we have and from what we

know in general of Roman life.
The writer on whose authority we are
compelled to rely largely is Cicero
and although he lacks specific in-
stances of persons suffering from
'infamia' as the result of condem-
nation in certain cases, yet Cicero
states so definitely that such was
the case - that we must take his
statements as authority. In his
Pro Roscio Comoedo II he shows
that condemnation in these
actions should, as they doubtless
did, come under 'infamia' or
rather he uses the positive 'ex-
istimatio'. "Quae ex societate debe-
atur? quid ais? Hoc jam neque
leviter ferendum est, neque
negligenter defendendum. Si qua
enim sunt privata judicia hum-
mae existimationis et pene
dicam capitis, tria haec sunt,
fiduciae, tutelae, societatis. Neque
enim perfidiosum et nefarium
est, fidem frangere, quae contineat
vitam et pupillum fraudare,
qui in tutelam pervenit; et
socium fallere, qui se in ne-
gotio conjunxit." Of 'mandatum'
he says "In minimis rebus, qui

mandatum negleverit, turpissimo judicio condemnetur, necesse est. In minimis privatisque rebus etiam negligentia id crimen mandati, judicioque infamiam revocatur, propterea quod si recte fiat, illum negligere oporteat qui mandavit, non illum qui mandatum recepit." (Pro Sextio Roscio Amerino XXXIX) In the preceding paragraph he shows that breach of 'mandatum' was as bad as theft. "Mandati constitutum est judicium non minus turpe quam furti."

The next classification of those suffering from 'infamia' might be made to include those exercising certain trades and professions. Here belong those who have bound themselves to serve as gladiators, those exercising the trade of lanista, actors, auctioneers, undertakers and registrars of deaths. "Qui se depugnandi causa locavit locatus est, erit fuit fuerit, --- qui ve lanistatura arteve ludicra fecit fecerit (lex Julia 25). -- Neve quis, qui praeconium, designationem, libitinamve faciet, diurnum eorum

quid faciet, in municipio colonia praefectura II viratum III viratum alibive quem magistratum petito neve capito neve gerito neve habeto, neve ibei senator neve decurio neve conscriptus esto, neve sententiam dicito (23). It was not here, as in the former group, the result of condemnation for any actions but rather the result of trades and professions which the Romans considered disgraceful, hence the idea that any one exercising them would be "infamis" and not qualified for office. Here the original conception of "infamia" based on the regimen morum of the censors is lost sight of in so far as we find it resulting from social standing rather than moral censure.

But why did "infamia" result from such trades and professions. Perhaps to a certain extent the Romans considered them disgraceful in themselves but the underlying principle seems to have been that of receiving pay. As a citizen of a free state independence of character seemed to the Roman

to be destroyed when pay was received. Since these professions were carried on at Rome for pay and since there was a strong prejudice against them it seems reasonable to suppose that when they are mentioned in the Lex Julia as disqualifying for office and for membership in the councils of the municipia etc. it is merely a result of the growing development of this feeling at Rome and that in Rome itself 'infamia' resulted from the same cause. No written law before the Lex Julia had so far as we know mentioned these grounds for disqualification yet the rules of the censor which had been growing more and more permanent must have given rise to that law.

Although, doubtless, all these professions were followed by 'infamia' the prejudice seems to have been particularly strong in the case of actors. By Cicero's time we find the idea developed that actors should be excluded from all privileges. Cicero is quoted in Augustine

de civitate dei II 13 as saying "cum artem ludicram scenamque totam probro duxerunt, genus id hominum non modo honore omnium religuorum carere, sed etiam tribu moveri notatione censoria voluerunt." As a result of this 'infamia' we find the actors forming a distinct class of persons. They did not belong to the tribes, nor were they allowed to be enlisted as soldiers in the Roman legions. They were therefore usually either freedmen, foreigners or slaves. 'Ingenuitas' made no difference if they were actors they were legally 'infames'. It is true that later, in the time of the emperors, men of equestrian rank either of their own accord or on compulsion often appeared on the stage and this together with the increasing influence of Greek manners, tended to improve the social position of actors but their legal status remained the same. They still suffered from 'infamia' they were still excluded from office. The lex Julia excluded from provincial honours. From Livy we have

with p. 967

evidence that actors were degraded from their tribe. The Atellan farces which grew out of scenic performances established in 364 B.C. to appease the wrath of heaven seem to have been considered apart from the regular plays and the performers seem to have been exempt from the disgrace of the ordinary actors. Livy tells us this (VII 2) at the same time implying the disgrace attached to regular actors - "quod genus ludorum ab Oscis acceptum tenuit iuventus nec ab histrionibus pollui passa est. eo institutum manet, ut actores Atellanarum nec tribu moveantur et stipendia, tamquam expertes artis ludicrae, faciant."

The next group of disqualifications in the Lex Julia deals with bankruptcy - "qui in ius bonam copiam alterius abiuraverit, bonamve copiam iurare iussus erit; quive sponsoribus creditoribusve suis renuntiaverit renuntiaverit se solutum solvere non posse; prove quo datum depensumve est erit; quibusve bona ex edicto

eius qui eive jure deicundo prae-
fuit praefuerit praeterquam si
quoius quem pupillus esset
reive publicae caussa abesset
neque dolo malo fecit fecerit
quo magis rei publicae caussa
abesset possessa proscriptave
sunt erunt." I dare we see the dif-
ferent phases of bankruptcy dis-
qualifying for membership in
the senate of the municipia.
This idea was doubtless a result of
the severity of the Roman laws of
debt and debtor. With the Romans
failure to pay a debt was regarded
as failure in civic duty and
since 'infamia' was so closely con-
nected with the idea of civil honor,
it seems only natural to sup-
pose it to be visited upon one
failing in this duty. But it
was probably not till the last
century of the Republic that 'in-
famia' resulted from bankruptcy.
Previous to that time imprison-
ment from debt had been gradual-
ly disappearing and the enforced
sale of the debtor's goods by the
creditors had been taking its
place.

everidge
p. 135

That in Cicero's time bankruptcy was considered worthy of infamia is shown by his his oration Pro P. Quintio XIII - "Pecunia mea tot annos vitiis P. Quintius: utatur sane: non peto. Quid igitur fugias ac, quod saepe multis in locis dixisti, ne in civitate sit? ne locum summo, quem adhuc honestissime defendit, obtineat? ne numeretur inter vivos? decernat de vita, et ornamentis suis omnibus?" But we turn to Cicero again for a particular case in which 'infamia' was involved It is the case of Antonius who afterwards became his colleague in the consulship. In de Petitione Consulatus II he says, referring to this Antonius, "eorum alterius bona proscripta vidimus; ... et ex senatu ejectum scimus". But this 'infamia' was not permanent in his case, that is it did not afterwards exclude him from holding a seat in the Senate from holding the consulship From this we judge that the various grades of bankruptcy did not involve 'infamia' at

such an early date as other causes, yet by the end of the Republic it was involved to such an extent that it was included in the permanent categories of the Lex Julia Municipalis.

Let us now turn to another clause in the Lex Julia, one that deals with disqualification resulting from condemnation "quive judicio publico Romae condemnatus est erit, quo circa eum in Italia esse non licet." Since the 'lex' mentions particularly condemnation involving exile, we would infer that not all condemnation resulted in 'infamia' at this time. It probably took many years to develop even the simple idea that condemnation in a 'judicium publicum' would result in 'infamia'.

The 'judicia publica' were, we know not all alike but each was established by a special law. This law stated the offence, procedure and punishment and the disqualification following condemnation in the particular court for which the law provided.

For example the Lex Cornelia de Ambitu which was passed in 181 B.C. provided that no one condemned under it should hold a magistracy for ten years. "damnati lege Corneliae hoc genus poenae ferebant, ut magistratuum petitione per decem annos abstinerent" (Schol. Bob. in Cic. pro Sulla 5, 17 p. 361 Orell.). Here the disqualification which lasted ten years was regarded a part of the punishment. But over a century later the feeling had developed so strongly against this crime that by the Lex Calpurnia passed in 67 B.C. "infamia" was made permanent, that is, any one condemned on that charge was excluded permanently from all offices and according to Dio Cassius XXVI, 21, from the Senate. The statement is given in the same passage as that mentioned above in connection with the Lex Cornelia de Ambitu. "Aliquanto postea severior lex Calpurnia et pecunia multavit et in perpetuum honoribus carere iussit damnatos." Here again "infamia" is considered part of the punishment.

The Lex Acilia Repetundarum, one of the laws passed before the Lex Julia Municipalis, that is about 59 B.C., furnishes evidence for disqualification resulting from condemnation. It provides that persons convicted under that law should be disqualified as witnesses, judices or senators. Suetonius in his life of Julius Caesar (43) mentions the removal from the senate of the convicted, "Ius laborissime ac severissime dixit. Repetundarum convictos etiam ordine senatorio movit."

Thus when we come to that clause in the Lex Julia dealing with disqualification as the result of condemnation in a disgraceful suit, we may believe that there was a more definite authority for it than for the other grounds since in the various laws enacted previous to this time in connection with the 'quaestiones perpetuae' there had been the statement that disqualification followed after condemnation. The remaining grounds for

disqualification given in the Lex Julia need but little notice - "quem ve kalumniae praevaricationis caussa accusasse fecisse quod judicatum est erit; quive apud exercitum ignominiae caussa ordo ademptus est erit; quemve imperator ignominiae caussa ab exercitu decedere jussit jusserit; quive ob caput civis Romani referendum pecuniam praemium aliudve quid cepit ceperit". There is little evidence in regard to these but there is no reason why we should not believe that such disqualifications existed at Rome as well as in the municipia The last disqualification in that group was probably of comparatively late origin as it had reference to the Sullan proscriptions.

Let us now turn to another phase of 'infamia' which is in some respects similar to and in some respects different from the censorian 'infamia'. It is the 'infamia' as exercised by the praetor. This is the conception of 'infamia' as it is found in its final stage, yet has its beginnings are found in

the Republic, it will not be out of place to mention it here.

In discussing these two kinds of 'infamia', it would be natural to ask what the relation between them was - whether they were entirely independent or based one on the other. The censorian infamia was in existence before the praetorian here if there was any relation between the two, the praetorian must have been based on the censorian.

Greenidge J. 115 gives as one of his arguments that the conception of the censorian 'infamia' was in existence in a fully developed form and that it would be natural for the praetor to make use of it. But this argument can have no weight unless it is supplemented by some proof that he did so. This will be proved later by showing the points of similarity between the two.

Greenidge gives certain other arguments on the relation of the two 'infamiae' which seem worth investigating. One of them he derives from the general nature of the

two. The praetorian "infamia" had for its object to preserve the dignity of the praetor's court, to exclude from it objectionable persons. The object of the censorian 'infamia' was similar except that its field was broader - that is, it excluded from the service to the State, the army, senate etc. persons who from their actions or occupations were considered objectionable. Since then the objects of the disqualification of the two were similar, it was natural that the grounds for disqualification should be much the same and since the censorian 'infamia' existed first the praetor would turn to that for his. The third argument Greenidge uses needs little discussion. It was based on the similarity of the
p. 115 language used by the censor and praetor and when we find such words as 'nota', 'notare' etc. used in both, we must agree that they bore some relation to each other.

But before discussing the main proof, that is the similarity of the two, it will be necessary to

mention, at least, the nature of the praetorian 'infamia'. It was in connection with his court that the praetor exercised his 'infamia' and it resulted particularly in disqualifying persons for postulating in that court.

It has already said that the praetor's object of using 'infamia' was to preserve the dignity of his court and it was in preventing those from postulating whom he considered disqualified that he did so.

As in the censorian 'infamia' the grounds for disqualification were embodied in the censor's edict so in the praetorian 'infamia' the edict has a similar use.

There are three rules for postulation given in those edicts - one referring to those not able to postulate for themselves, one to those able to postulate only for themselves and a third to those able to postulate for themselves and only in exceptional cases for others.

In Book III of the digest is a list of those who are visited with

"infamia" and we will endeavor to show the points of similarity between these and the ones mentioned in the Lex Julia which we have said was doubtless a codification of the censorian "infamia" The title begins - "Praetoris verba dicunt: Infamia notatur, qui ab exercitu ignominiae caussa ab imperatore vel cui de ea re standi potestas fuerit dimissus erit." Compare with this the clause in the Lex Julia (25) which reads as follows "quemve imperator ignominiae caussa ab exercitu dedecere jussit jusserit". This comparison shows a similarity in the grounds for the two "infamias".

But take the next clause in the same section of the digest - "qui artis ludicrae pronunciandive causa in scaenam prodierit, qui lenocinium fecerit." In the Lex Julia (25) "quemve histrionum artemve ludicram fecit fecerit". In both, "ars ludicra" and "lenocinium" are causes for "infamia".

Again, the words of the praetor are "qui in judicio publico calumniae praevaricationisve causa quid

fecisse judicatus erit". The same grounds for disqualification are given in the Lex Julia as follows: "quemve talumniae praevaricationis causa accusasse fecisseve quod judicatum est erit". The praetor's edict also says "In jure vi bonorum raptorum injuriarum de dolo malo et fraude suo nomine damnatus pactusve erit; qui pro socio, tutelae, mandati, depositi suo nomine, non contrario judicio damnatus erit." The parallel passage in the Lex Julia is "qui in jure, quod ipse fecit fecerit, condemnatus pactusve est erit; quive judicio fiduciae, pro socio, tutelae, mandati, injuriarum deve dolo malo condemnatus est erit".

These comparisons will show that many of the causes of the two infamias were similar and that the praetor's "infamia", which had its beginning in the Republic and which reached its fuller development in the time of the Empire, was based largely on the first form of "infamia", that exercised by the censor.

The Infamia of the
Roman Republic.

Isabelle Hagen.

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